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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 697

WILLIAM R. EDDLEMAN, *Petitioner*,

v.

SUPREME COURT OF WASHINGTON, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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November 16, 1964

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William R. Eddleman prays that a writ of certiorari issue to review an order of the Supreme Court of the State of Washington, entered on February 13, 1964, disbarring him and striking his name from the roll of attorneys entitled to practice law in the State of Washington.

OPINION BELOW

The opinion of the Supreme Court of Washington, reported at 63 Wash. (2d) 777 and 389 P.(2d) 296, is set forth as Appendix A hereto. Its order denying rehearing, entered June 19, 1964, is set forth as Appendix B hereto.

JURISDICTION

The jurisdiction of this Court is invoked under Section 1257(3) of the Judicial Code of the United States. This petition is timely filed, Mr. Justice Harlan having granted an extension of time within which to file it to November 16, 1964 by order entered September 17, 1964.

QUESTIONS PRESENTED

1. Does the "due process clause" of the Fourteenth Amendment to the Constitution of the United States permit a state to enter an order disbarring a lawyer from the practice of his profession on the basis of proceedings to that end instituted 11 years after the transaction that was the genesis of the proceedings took place?

2. Does a state violate the "due process clause" of the Fourteenth Amendment to the Constitution of the United States when it denies an application for rehearing of an order disbarring a lawyer from the practice of his profession, which application for rehearing seeks to adduce evidence respecting the events upon which the order of disbarment is based that, through no fault of the applicant, did not become available until after the record upon which the order was based was closed?

CONSTITUTIONAL PROVISIONS INVOLVED

Section 1 of Amendment XIV to the United States Constitution reads as follows:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any per-

son of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

In June of 1951 Petitioner was engaged in the practice of law in Seattle, Washington under the firm name of Eddleman & Wheeler, the latter then deceased. He was consulted by one Anton R. Johansen, the owner of a Douglas airplane, variously called a C-47 or a DC-3. Johansen was heavily indebted to various creditors and the airplane was in imminent danger of being sold in satisfaction of the debts. To complicate the problem, the airplane had been lying idle for 22 months and major repairs were needed to render it flyable. Petitioner undertook to arrange to borrow a maximum of $24,000 and to endeavor to settle Johansen's debts in that amount. He thereupon departed Seattle for a period of several weeks, leaving John Sweet, a lawyer in his employ, to conduct negotiations with Johansen's creditors and make appropriate arrangements. Upon Petitioner's return to Seattle he found that Sweet had committed him to Johansen's creditors in a total amount of some $26,000 and that title to the airplane had been transferred to him.

The foregoing was the genesis of the events taking place over the next several years upon which the Supreme Court of Washington grounded its order of disbarment. The only relevant subsequent events clearly established are as follows: Petitioner settled all of Johansen's known debts, expended some $7,000 to repair the airplane, transferred title to it to Kern, Inc., a corporation in which he owned all of the stock, and caused it to be leased to different lessees. In June

of 1952 Petitioner was served with a writ of garnishment in a suit instituted by another creditor of Johansen commanding him to state, *inter alia,* whether he had in his possession any property belonging to Johansen. Petitioner answered that he did not, both in writing and in testimony. In January of 1953 Johansen demanded the return of the airplane, and employed a lawyer, one Robert Beresford, to press his demand. Protracted negotiations were completed in November of 1954, as a result of which Johansen paid Petitioner $9,000, took title to all of the stock of Kern, Inc. and executed a release of all claims against Petitioner. Johansen thus secured the return of the airplane free and clear of all liens, in sound operating condition and worth some $65,000.

Nevertheless, in November of 1957 Johansen brought suit against Petitioner for an accounting, alleging that Petitioner had realized profits from the operation of the airplane that he had not disclosed in the negotiations that culminated in the return of the airplane to Johansen three years earlier. The Superior Court of King County, Washington entered judgment for Petitioner on the merits in this suit, which judgment was affirmed by the Supreme Court of Washington in *Johansen* v. *Eddleman,* 54 Wash. 2d 871, 343 P. 2d 737 (1959). Upon the filing of suit against him by Johansen Petitioner brought suit against Beresford alleging that he had falsely represented that he had authority to settle all of Johansen's claims. This suit was dismissed in January of 1958 after Beresford gave Petitioner a copy of the release executed by Johansen in 1954, with costs against Beresford.

Two years later, in March of 1960 one Fred Paul who had represented Johansen in his suit for accounting

after Beresford had advised against instituting it, complained of Petitioner to the Washington State Bar. More than a year thereafter, in June of 1961, Petitioner was advised that a formal complaint had been issued. After hearings upon the formal complaint held in 1962, the hearing panel made the following findings of misconduct on the part of petitioner: (1) that petitioner had taken title to Johansen's airplane in June of 1951 for the purpose of deceiving Johansen's creditors and the public, for which it recommended a reprimand; (2) that Petitioner had untruthfully stated in his written and oral responses to the writ of garnishment that he had no property in his possession belonging to Johansen, for which it recommended suspension from practice for three years; (3) that Petitioner's suit against Beresford was dishonorably motivated, for which it recommended suspension from practice for three years; (4) that Petitioner was improperly using the firm name of Eddleman & Wheeler, for which it recommended a reprimand.

Upon review of the record the Board of Governors of the Washington State Bar affirmed the panel's findings but reduced the recommended periods of suspension from the practice of the law from three years to one year. The Supreme Court of Washington also affirmed the panel's findings, but increased the penalty to permanent disbarment, three of the nine judges dissenting on the ground that the Court should not have imposed a penalty harsher than that recommended by the Board of Governors. As Judge Hunter put it in his dissent, "the backdrop of the case was a business transaction between Eddleman and Johansen, rather than a typical attorney and client relationship." Johansen received "a substantial financial advantage,"

and the atmosphere was one "of disputes and misunderstandings where emotions undoubtedly influenced better judgment." And as Judge Poyhonen put it in his dissent, the proceeding "arose in most part in connection with events six to thirteen years ago."

During the course of the hearings Petitioner unsuccessfully sought to locate documentary material that had been placed in the custody of the Superior Court of King County in connection with the litigation in *Johansen* v. *Eddleman*. Among this material was correspondence reflecting the knowledge and understanding of the transaction between Petitioner and Johansen on the part of two persons who had subsequently died, one of whom had been counsel for the bank through which Petitioner obtained the funds necessary to discharge Johansen's debts and make the repairs necessary to render the airplane operative. Also among this material were several hundred pages of the files and records of one Richard Keatinge, a lawyer in Los Angeles who referred Johansen to Petitioner, whose office organized Kern, Inc., and who had correspondence respecting the matters at issue from June of 1951 through 1954.

Unfortunately, these records had been mislaid by the clerk of the Court and were not found until after the evidentiary record in the proceeding was closed. When they were found Petitioner filed a petition for rehearing with the Supreme Court of the State of Washington describing them, attaching copies of some of them and explaining why they were relevant and material, particularly on the issue of Petitioner's motivation and good faith. This issue was crucial, for the opinion of the Supreme Court makes plain that

its order rests on inferences as to Petitioner's motivations, purposes and understanding of the arrangement with Johansen—inferences all drawn from a welter of what it called "conflicting and irreconcilable testimony," the bulk of it that of witnesses such as John Sweet, who were both adverse and personally hostile to Petitioner. Nevertheless, the Court denied rehearing. The petition for rehearing is 49 pages long. The portion of it generally describing the evidence sought to be adduced is attached hereto as Appendix C. The detailed discussion of that evidence and its relation to the evidence of record is omitted in order to keep this Petition within reasonable bounds.

REASONS WHY THE WRIT SHOULD BE GRANTED

This is a case of first impressions. The correct resolution of the issues it presents is not only vital to Petitioner, but also vital to the proper application of the concept of due process of law, which is of course a principal bulwark against governmental procedures that unfairly deprive citizens of their fundamental rights. The basic issue is simply this: Is one's right to practice his profession part of the liberty and property that a state may not deprive him of without affording him the same procedural safeguards that the Constitution requires it to afford one accused of a misdemeanor that is merely *malum prohibitum*?

The proceeding here was admittedly not a criminal one in the technical sense. However, this Court has made clear that the specific rights guaranteed by the Sixth Amendment, made applicable to the states by the Fourteenth, are not confined to criminal proceedings. *Willner* v. *Committee on Character and Fitness*, 373 U.S. 96 (1963); *Greene* v. *McElroy*, 360 U.S. 474, 497

(1959). Among those specific rights is the right to a speedy trial. The right to a speedy trial not only protects an accused against undue delay in the prosecution of charges after they have been brought, but also against undue delay in the bringing of charges. *United States* v. *Provoo,* 350 U.S. 857 (1955), affirming *Petition of Provoo,* 17 F.R.D. 183 (D. Md. 1955).

The primary purpose of a speedy trial, like the primary purpose of statutes of limitations, is to protect the fundamental right to adduce evidence in defense, a right that cannot be effectively exercised after witnesses have scattered or died, memories have grown dim, and documents have been lost or destroyed. See *U.S.* v. *McWilliams,* 69 F. Supp. 812 (D.D.C. 1946). The protection of this right is particularly imperative in cases such as this in view of the ease with which charges of professional misconduct can be lodged, and the propensity of unsuccessful litigants to blame their plight on unfounded allegations of incompetence or misconduct on the part of counsel. Hence, courts have not hesitated to refuse to entertain demands for disciplinary action based on stale claims. *People rex. rel. Colorado Bar Assn.* v. *Tanquary,* 48 Colo. 122, 109 Pac. 260 (1910); *People rex rel. Noyes* v. *Allison,* 68 Ill. 151 (1873); *In Re Whitbridge,* 162 App. Div. 884, 146 N.Y. Supp. 366 (1914). See also *In Re Bond,* 187 Wash. 200, 60 P. (2d) 54 (1936).

In this case Petitioner's alleged misconduct was not brought to the attention of the State Bar until March 11, 1960, nearly nine years after the first transaction in which the Court found Petitioner guilty of misconduct occurred, nearly six years after the controversy

generated by that transaction had been settled, and a year after the Supreme Court of Washington had affirmed a judgment absolving Petitioner from any breach of trust respecting that transaction. Hearings were not held until six months after that.

Meanwhile, time and the tortured and acrimonious course of the dealings between Petitioner and Johansen and his lawyers, including three lawsuits, had taken their toll. Two witnesses were dead. Extensive documentary material had been mislaid in the Superior Court. Martindale-Hubbel had destroyed the letter of the late Mason Wheeler evidencing the existence of the firm of Eddleman & Wheeler. Memories of events and conversations were dim or non-existent. The result was a welter of conflicting and irreconcilable testimony. Yet the Supreme Court of Washington chose to draw inferences that would cast the established facts in the worst light for Petitioner and then, reversing both the hearing panel and the Board of Governors of its Bar, to permanently disbar him.

There can be no doubt that to have convicted Petitioner of a criminal offense in such circumstances would have been to deny him due process of law.* To deprive him of his livelihood as a lawyer in such circumstances was no less to deny him due process of law. *A fortiori,* Petitioner was denied due process of law when he was denied a rehearing for the purpose of adducing evidence that was unavailable at the time of the hearings because lost in the Superior Court, and that was relevant and material on both the issue of his veracity and the issue of his good faith and honorable purposes, the crucial issues in the case.

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* In fact, a criminal prosecution would have been barred by the statutes of limitations. R.C.W. 4.16.040; 4.16.080; 10.01.020.

CONCLUSION

This Court has no higher duty than to assure that the due process clause of the Fourteenth Amendment is interpreted and applied so as to fully achieve its paramount purpose—to assure fundamental fairness in all procedures touching upon the rights of liberty and property. We submit that the discharge of that duty in this case requires the issuance of a writ of certiorari.

Respectfully,

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November 16, 1964